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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 NAYELI MENDEZ and HECTOR) No. C 07-02544 VRW
18 MARTINEZ,)
Plaintiffs,)
19 v.) STIPULATION AND AGREEMENT OF
UNITED STATES OF AMERICA,) COMPROMISE AND SETTLEMENT;
Defendant.) ~~[PROPOSED] ORDER~~
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28)

BY AND THROUGH THEIR ATTORNEYS OF RECORD, THE PARTIES AGREE TO
THE FOLLOWING STIPULATION AND AGREEMENT OF COMPROMISE AND
SETTLEMENT AND [PROPOSED] ORDER:

1. The parties do hereby agree to settle, compromise and dismiss the above-captioned action ("This Action") under the terms and conditions set forth herein.
2. Defendant United States of America ("Defendant") agrees to pay the sum of Three Hundred Twenty Five Thousand Dollars and No Cents (\$325,000.00) to Plaintiffs Nayeli

1 Mendez and Hector Martinez ("Plaintiffs"), made payable to Nayeli Mendez, Hector Martinez
2 and Gwilliam, Ivary, Chiosso, Cavalli & Brewer under the terms and conditions set forth herein.

3 3. Plaintiffs and their heirs, executors, administrators, assigns and attorneys hereby
4 agree to accept the sum of Three Hundred Twenty Five Thousand Dollars and No Cents
5 (\$325,000.00) in full and final settlement and satisfaction of the claims raised in This Action
6 under the terms and conditions set forth herein.

7 4. The parties also agree that the settlement amount of Three Hundred Twenty Five
8 Thousand Dollars and No Cents (\$325,000.00) represents the entire amount payable to Plaintiffs
9 and their heirs, executors, administrators, assigns, agents, representatives, consultants and
10 attorneys.

11 5. The parties also agree that neither Plaintiffs nor any of their attorneys may make
12 any claim for attorney's fees or other costs or expenses of litigation against Defendant, its agents,
13 servants, or employees in connection with Plaintiffs' claims as set forth herein.

14 6. In consideration of the payment of Three Hundred Twenty Five Thousand Dollars
15 and No Cents (\$325,000.00) and the other terms of this Stipulation and Agreement, Plaintiffs
16 agree that they will immediately upon execution of this agreement execute a Stipulation of
17 Dismissal, which stipulation shall dismiss with prejudice all claims asserted in This Action and
18 any claims that could have been asserted in This Action, which is captioned Nayeli Mendez and
19 Hector Martinez v. United States of America, C 07-02544 VRW. The fully-executed Stipulation
20 of Dismissal will be held by Defendant's counsel and will be filed with the Court upon receipt by
21 Plaintiffs' counsel of the settlement amount.

22 7. Defendant will tender the settlement check within ninety (90) days of the Court's
23 order approving the terms listed in this Stipulation and Agreement.

24 8. The parties further agree that the filing of this executed Stipulation and
25 Agreement shall notify the Court of the parties' agreement to vacate all pending discovery,
26 motion hearing dates, pretrial deadlines and any other case management date associated with this
27 litigation.

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1 9. In consideration of the payment of Three Hundred Twenty Five Thousand Dollars
2 and No Cents (\$325,000.00) and the other terms set forth in this Stipulation and Agreement, as
3 set forth above, Plaintiffs hereby release and forever discharge Defendant and any and all of its
4 past and present officials, employees, agents, attorneys, successors, and assigns from any and all
5 obligations, damages, liabilities, causes of actions, claims, and demands of any kind and nature
6 whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason
7 of any and all known, unknown, foreseen, or unforeseen injuries, and the consequences thereof,
8 resulting from the facts, circumstances and subject matter that gave rise to This Action.

9 10. The provisions of California Civil Code Section 1542 are set forth below:

10 A general release does not extend to claims which the creditor does not know or
11 suspect to exist in his favor at the time of executing the release, which if known
by him must have materially affected his settlement with the debtor.

12 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their
13 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and
14 all rights they may have pursuant to the provision of that statute or pursuant to any similar
15 provision of federal law. Plaintiffs understand that if the facts concerning Plaintiffs' claimed
16 injuries and the liability of Defendant or its agents, servants, or employees for damages
17 pertaining thereto are found hereafter to be other than or different from the facts now believed to
18 be true, this Stipulation and Agreement shall be and remain effective notwithstanding such
19 material difference.

20 11. The parties acknowledge that neither this Stipulation and Agreement nor anything
21 contained herein shall constitute an admission of liability or fault on the part of Defendant or its
22 agents, servants, or employees. This agreement is entered into by the parties for the purpose of
23 compromising disputed claims and avoiding the expenses and risks of litigation.

24 12. This Stipulation and Agreement may be pled as a full and complete defense to any
25 action or other proceeding, including any local, state or federal administrative action, involving
26 any person or party that arises out of the claims released and discharged by this agreement.

27 13. Plaintiffs and their counsel have been informed and agree that payment of the

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1 settlement amount may take up to ninety (90) days to process. Defendant will submit a request
2 for payment to the National Finance Center within seven (7) days after Plaintiffs' execution of
3 this Stipulation and Agreement.

4 14. The parties agree that the District Court shall retain jurisdiction over this matter
5 for the purpose of resolving any dispute alleging a breach of this Stipulation and Agreement.

6 15. Each party acknowledges that it has been represented by and has relied upon
7 independent counsel in negotiating, preparing and entering into this Stipulation and Agreement
8 and that it has had the contents of this Stipulation and Agreement fully explained by counsel and
9 that it is fully aware of and understands all of the terms of the agreement and the legal
10 consequences thereof. It is further acknowledged that the parties have mutually participated in
11 the drafting of this Stipulation and Agreement and it is agreed that no provision herein shall be
12 construed against any party hereto by virtue of the drafting of this Stipulation and Agreement.

13 16. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
14 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
15 any way be affected or impaired thereby. This instrument shall constitute the entire agreement
16 between the parties, and it is expressly understood and agreed that this agreement has been freely
17 and voluntarily entered into by the parties hereto with the advice of counsel, who have explained
18 the legal effect of this agreement. The parties further acknowledge that no warranty or
19 representation has been made on any subject other than as set forth in this Stipulation and
20 Agreement.

21 17. Pursuant to 42 U.S.C. § 233(k)(2), in each fiscal year the Secretary of the
22 Department of Human Services is required to establish a fund, not to exceed \$10,000,000, for the
23 payment of settlements and judgments of medical malpractice cases involving deemed public
24 health service employees. The actual amount of the fund is subject to appropriations by
25 Congress. Each year, the amount of settlements and judgments have exceeded the amount
26 appropriated into the fund by Congress. Payment of any settlement or judgment is contingent
27 upon appropriations into the fund.

28

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1 SO STIPULATED.

2 Dated: April 10, 2008

Nayeli Menendez
NAYELI MENDEZ, Plaintiff

5 Dated: April 10, 2008

Hector Martinez
HECTOR MARTINEZ, Plaintiff

7 Dated: April 10, 2008

By:

AB
STEVEN J. BREWER
GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER
Attorneys for Plaintiffs

11 JOSEPH P. RUSSONIELLO
United States Attorney

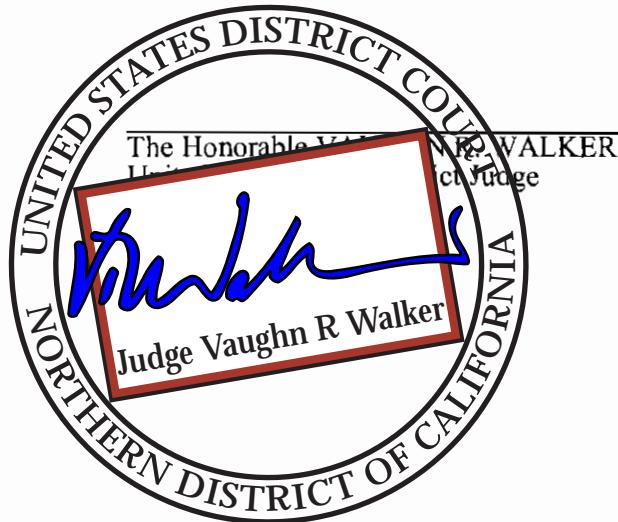
13 Dated: April 14, 2008

By:

Neile
NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant

16 PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT, APPROVED AND
17 SO ORDERED:

19 Dated: 04/15/08



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